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COHEN MILSTEIN

October 14, 2022

MEMO ENDORSED

VIA ECF

The Honorable Katherine Polk Failla
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Iowa Pub. Emps. 'Ret. Sys. et al. v. Bank of Am. Corp. et al.*, No. 17-cv-6221 (KPF)

Dear Judge Failla:

Section 9 of the Protective Order (Dkt. No. 150), as amended by the Supplemented Stipulated Protective Order (Dkt. No. 228), provides that for any filing that quotes or refers to discovery material that has been designated Confidential, Highly Confidential, or Highly Confidential Data, the party “shall request to file such documents or portions thereof containing or making reference to such material or information in redacted form or under seal.” Consistent with the process this Court approved for such requests (Dkt. No. 408), the Parties now move for sealing or redaction of Plaintiffs’ Response to Defendants’ Objections to Magistrate Judge Cave’s Report and Recommendation Granting in Part and Denying in Part Plaintiffs’ Motion for Class Certification and Appointment of Class Counsel (Dkt. No. 597), Declaration of Daniel L. Brockett In Support of Plaintiffs’ Response to Defendants’ Objections to Magistrate Judge Cave’s Report and Recommendation (Dkt. No. 598), and Exhibits A, B, and C to Plaintiffs’ Response (Dkt. Nos. 598-1, 598-2, 598-3) (collectively “Plaintiffs’ Response”). The Parties’ justifications for sealing or redacting those materials under *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006), and its progeny are as follows.

Plaintiffs’ Justifications and Designations

Plaintiffs’ Response quotes from, discusses, and makes reference to the substance of documents designated “Confidential” and “Highly Confidential” under the Parties’ January 2, 2019 Protective Order (Dkt. No. 150). Such materials include trade secrets, other confidential research, development, or commercial information, and other private or competitively sensitive information, including personal data. Accordingly, Plaintiffs request that the marked portions of Plaintiffs’ Response dated September 29, 2022 be filed in redacted form. In addition, Plaintiffs request that Exhibits B and C to Plaintiffs’ Response, (Dkt Nos. 598-2, 598-3), be filed under seal. This is in accordance with Section 9 of the Protective Order, which provides that, for “papers containing or making reference to the substance of [“Confidential”, “Highly Confidential”, or “Highly Confidential Data”] material or information, [a Party] shall request to file such documents or portions thereof containing or making reference to such material or information in redacted form or under seal.” Plaintiffs’ Response likewise references materials previously entered in redacted

form and/or under seal. *See e.g.*, Dkt. No. 589. Accordingly, Plaintiffs request that the marked portions of Plaintiffs' Response be filed in redacted form and/or under seal, pursuant to *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006) and its progeny.

Defendants' Justifications and Designations

Plaintiffs' Response quotes from, discusses, and makes reference to the substance of documents and data designated "Confidential" and "Highly Confidential" under the Parties' January 2, 2019 Protective Order (Dkt. No. 150). Such materials include trade secrets, other confidential research, development, or commercial information, and other private or competitively sensitive information, including personal data. Accordingly, Defendants request that the marked portions of Plaintiffs' Response be filed in redacted form. This is in accordance with Section 9 of the Protective Order, which provides that for "papers containing or making reference to the substance of ["Confidential", "Highly Confidential", or "Highly Confidential Data"] material or information, [a Party] shall request to file such documents or portions thereof containing or making reference to such material or information in redacted form or under seal." Plaintiffs' Response references materials previously entered in redacted form and/or under seal. *See e.g.*, Dkt. No. 589. Accordingly, Defendants request that marked portions of Plaintiffs' Response be filed in redacted form and/or under seal, pursuant to *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006) and its progeny.

Respectfully submitted,

/s/ Michael B. Eisenkraft
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/s/ Daniel L. Brockett
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Application GRANTED. The Clerk of Court is directed to maintain docket entries 597 and 598, as well as Exhibits A, B, and C to docket entry 598, under seal, viewable only to the parties and the Court.

The Clerk of Court is directed to terminate the motion at docket entry #599.

SO ORDERED.

Dated: October 14, 2022
New York, New York



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE